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10/529,387	09/12/2005	Can Unit	P27633	6743
7055	7590	04/10/2009	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191				PELHAM, JOSEPH MOORE
ART UNIT		PAPER NUMBER		
		3742		
NOTIFICATION DATE		DELIVERY MODE		
04/10/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/529,387	<b>Applicant(s)</b> UNIT ET AL.
	<b>Examiner</b> Joseph M. Pelham	<b>Art Unit</b> 3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 20 March 2009.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-29 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-10 and 12-29 is/are rejected.  
 7) Claim(s) 11 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 12 September 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

The amendment filed 3/20/09 is acknowledged. Claims 1-29 remain pending.

***Claim Rejections - 35 USC § 112***

Claims 2, 5, 9, 10, 13-15, and 18-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Each of claims 2, 5, 9, 10, 19, 21, 22, 24, 27, and 28 recites either a "cold" or "cooled" medium, which are strictly relative modifiers, rendering the claim indefinite. Since the contemplated fluid *acts as a coolant*, which function is accomplished by *absorbing* heat energy, it is "*a heat absorbing*" or "*cooling* medium," or a "coolant."

Claim 13, lines 1-2, and claim 18, lines 3-4, recite "the heating element... provided, at a lower end thereof," which is indefinite since no structure has been recited to establish the existence, and thus the meaning, of upper or lower "ends."

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 9, 10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. 3339480.

Referring to Figs. 1 & 2, and col. 2, lines 6-64, and since "cool" and "cooled" are strictly relative terms, US'480 discloses the device substantially as claimed, including a motorized, hollow spit 15, with a "delivery channel" 17, *which also acts as a "return channel,"* through which fluid, a "heat accumulator," flows *from and to* reservoir 30, having a cooling effect since reservoir 30 is outside the heated region, the reservoir 30 acting as a "heat exchanger" (claim 4) since it necessarily emits the heat energy absorbed when the fluid is inside the heated region, and "radially oriented" "outlet openings" 17 which are also "delivery channels," through which the fluid can pass into the natural "channels" in the "foodstuffs" A. Cap 50 is the recited "cooling element" at a "radial spacing," "substantially parallel to, and removably coupled to the "central body, since the plane characteristic of cap 50 can be said to be parallel to spit 15, the cooling

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element 50 has a channel 61 through which a cooled medium flows, albeit in very small quantities since ball 70 prevents a large flow rate

Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. 4663517.

Referring to Figs. 1-4 & 7, and col. 3, lines 49-68, US'517 discloses a rotating spit 38, a heating element 28 mounted at a "lower end" to an "upper branch" 68 of a U-shaped holder 32 provided beneath the "foodstuffs."

Claims 19-25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. 4190100.

Referring to Fig. 3, US'100 discloses a "central body" 11 with a delivery 26 and removal 28 channels for a coolant, a heat exchanger 7, a parallel cooling element 11 removably coupled to the central body (any of the other removable "needles"), as claimed.

The examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The "central body" of US'100 is clearly capable of supporting foodstuffs.

*Alternatively*, internal "cooling element" 18 is "parallel in relation with a longitudinal axis of the central body 17," is radially spaced from body since they are coaxial but not in contact, and "the cold medium flows from the inlet line and to the outlet line of the central body," since coolant flows from the space between 17 and 18 (the inlet of 18) into cooling element 18, and then through to the discharge manifold (the outlet also of 18).

### ***Claim Rejections - 35 USC § 103***

Claims 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over US'480 in view of US Pat. 4810856.

The claim differs from US'856 only in calling for a cooling element parallel to the central body. US'856 discloses, at Fig. 1, a cooling element 33 parallel to a central body 5. Since elements 33 are metallic and would be attached to cooled body 15 of US'480, elements 33 would also absorb heat energy and thus function as "cooling elements."

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'480 in view of US'517.

The claim differs from US'856 only in calling for a device to which the heating element can be secured "pivotably and displaceably" to an "upper branch" of a "U-shaped" holder." US'517 discloses, at Figs. 1-3, a device 32 to which the heating element is secured "pivotably and displaceably to U-shaped element 32 by means of "device" 26. Clearly the heater can be removed, either with or without tools. The heater

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has a pivotal connection 26 with element 32, and is displaceable by the movement of element 32, meeting the claim limitation. When element 32 is rotated to adjust the heater position, the heater and U-shaped holder 32 assume a position in which the heater is secured to "an upper branch" of the holder, as claimed.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'480 in view of US Pat. 5025639.

The claim differs from US'856 only in calling for a refrigeration counter beneath the oven. However, US'639 discloses a refrigeration counter onto which the cooking device could be placed, in which case the counter "receives a heat exchanger." It would have been obvious to place the cooking device of US'480 on the counter surface of US'639, to provide a cooled surface on which to keep the uncooked meats over the course of a long afternoon cookout.

### ***Allowable Subject Matter***

Claim 11 is objected to as being dependent upon a rejected base claim, but *would appear to be allowable* if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 26, 28 and 29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed 3/20/09 have been fully considered but they are not persuasive.

The amendments have not overcome the 35 USC 112, 2<sup>nd</sup> paragraph rejections as discussed above.

With respect to the rejection of claims 1-7, 9, 10, and 12 as being anticipated by US'480 (Raman et al), Applicant asserts that US'480 does not include delivery and return channels, a heat exchanger (housing 30 according to the rejection), a cooling element (held by the rejection to be cap 50) at a radial spacing from the central body, or spit outlet openings communicating with channels in the foodstuffs on the spit (pages 9-12 of the response).

However, since the fluid housing 30 **does not force** fluid into the spit, inevitably some quantity of the fluid will return from the spit to the housing 30; hence the spit functions as both a delivery and a return channel, as claimed. The fluid returning to housing 30 will have been heated while in the cooking chamber, and housing 30 will act as a heat exchanger since the fluid will release some of its heat energy there. Cap 50 is

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"coupled to the central body" (spit 15) via housing 30, at a "radial spacing from the central body," since it is not coincident with the "central body" (spit) axis, regardless of its placement in the axial direction. It is inherently a cooling element since the fluid that was heated in the cooking chamber is will release heat energy upon contact with cap 50. Spit outlet openings will necessarily deliver fluid into the food item on the spit, which will then pass into the various natural passageways and channels in the food item; the openings therefore communicate with channels in the foodstuffs on the spit.

With respect to the rejection of claim 18 as being anticipated by US'517 (Huff et al), Applicant asserts that US'517 does not disclose a heating element secured "at a lower end... pivotably and displaceably on a U-shaped holder... its lower end on an upper branch of the holder." This same argument has been applied to the rejection of claims 13 and 14 (pages 12-16, 18, & 19).

The examiner notes firstly that the vagueness of claim 18, its concomitant inordinate breadth, and reason it remains the subject of a 35 USC 112, 2<sup>nd</sup> paragraph rejection, allows of a far broader interpretation than that supplied by Applicant in the response. Applicant asserts, for example, that the heating element of US'517 is "supported [at] a mid portion" by "bracket 26... welded to the U shaped holder along a mid portion... (not at any end)." As depicted in figure 3, however, the bottom portion of heater 28 is its "lower end," and the bracket 26 to the left side of U shaped holder 32 is clearly nearest a "lower end" of heater 28. Further, while Applicant states that because the bracket 26 is "spot welded to the U shaped holder 32, it is not possible for the bracket to be pivotably and displaceably secured to the U shaped holder 32." *Claim 18 does not recite that the brackets are so mounted*, but only that the "heating element... is secured pivotably and displaceably on a U shaped holder." Heater 28 is secured to U shaped holder 32, and it is clearly mounted pivotably and displaceably, albeit it pivots with respect to hub 74, as claimed.

With respect to the rejection of claims 19-27 as being anticipated by US'100 (Wallace), Applicant asserts that, as shown by US'100, "none of the needles are coupled to another needle... [and] no indication that the needles... are removable." The cooling needles 11 are coupled via manifold components 10, 19, and the bolt-like structure of each clearly allows removal. Either of needles can be identified with the "central body," and the other a removable one "arranged at a radial spacing from the central body," as claimed (pages 16-17).

Applicant states further, referring to claim 19, that "the cooling element needle does not receive coolant from the inlet and outlet lines of the central body needle." The examiner notes that *the claim does not recite this*, rather a "cooling element... through which the cold medium flows from the inlet line and to the outlet line of the central body." Please note that internal "cooling element" 18 is "parallel in relation with a longitudinal axis of the central body 17, and that "the cold medium flows from the inlet line and to the outlet line of the central body," since coolant flows *from* the space between 17 and 18 (the inlet of 18) into cooling element 18, and then through to the discharge manifold (the outlet also of 18), meeting the claim.

The examiner reiterates that many of the claimed limitations at present allow a far broader interpretation than that contemplated by Applicant.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M. Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph M. Pelham/  
Primary Examiner, Art Unit 3742  
4/7/09